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November 28, 2003

Commissioner for Patents  
Box: 1450  
Alexandria, VA 22313-1450

RE: APPLICATION OF HERZINGER TITLED: "METHOD FOR IMPROVING  
PRECISION OF DATA ACQUIRED BY SPECTROPHOTOMETER SYSTEMS";  
SERIAL NO.: 09/862,881  
FILING DATE: 08/09/03  
ART UNIT: 2851  
EXAMINER: ESPLIN

RESPONSE TO REQUIREMENT OF RESTRICTION

Dear Sir;

I am in response of a Restriction Requirement dated  
11/07/03, regarding the identified Application.

With strong Traverse, to initially simplify the Examination  
Procedure, Applicant Provisionally Elects Claims 1, 39, 40 and 18  
- 20. Said Claims involve obtaining Baseline Data Twice and  
Sample Data once, and accepting said Sample Data if a Ratio of  
the Two Baseline Data is within an acceptable range near 1.0.  
Claim 1 focuses on performing the Method at "at least one  
wavelength". Claim 18 follows, (as do other Original Claims),  
the same Method and in addition provides for reacquiring and  
replacing Data at a Wavelength where the Ratio of Baseline Data  
is outside an acceptable value near 1.0. (Said Claims also  
involve forming a Ratio of Sample and Baseline Data).

The basis of the Traverse is that a Common Theme in ALL the Original Method Claims 1 - 45 is the Acceptance of Sample Data based on a comparison of Two Baseline Data obtained at two times near when Sample Data is obtained. Taking Baseline Data without a Sample present at two times allows forming a Ratio of said two Baseline Data, and if said Ratio is near 1.0 it is considered that data obtained from a Sample at near the same time is reliable. That is, nothing affected the System such that the Sample data was affected in some untoward way. Again, it is very likely that if the Ratio of the Two baseline data is near 1.0, that the Sample Data obtained about the same time is valid.

Continuing, it is believed that the Examiner feels that the Drawings show Systems which are one-for-one applicable in Methodology of the Claims. This is not the case. In fact, the Drawings are actually not even necessary. The Drawings are provided only to show exemplary and demonstrative systems which can be used to acquire Data. Fig. 1, for instance, can be viewed as a System in which Data is Sequentially acquired over a range of wavelengths by a Detector (DET). A Monochromator (MC) is present and provides wavelengths one by one, and the Detector (DET) provides Data for one wavelength at a time. Fig. 2 indicates that a multiplicity of Wavelengths can be detected Simultaneously by a Multi-Element Detector (DET) which is simultaneously provided spatially separated wavelengths by a Dispersive Element (DE). The same Data needed to practice the Claimed Methodology is provided by use of either the Fig. 1 or Fig. 2 System, and differs only in that it is acquired Sequentially, and In-Parallel vs. Wavelength, respectively. Figs. 1 and 2 assume that only Sample Data OR Baseline Data is acquired at one time. Fig. 4 simply indicates that a First Baseline and Sample Data can be obtained simultaneously by using a Beam Splitter (BS) arrangement. Use of a Fig. 4 System

typically involves removing the Sample (SS) and then obtaining the Second baseline, at a closely related time after the First Baseline Data was acquired. Fig. 5 is included to show that electromagnetic radiation can approach a Sample (SS) at an Angle-of-Incidence.

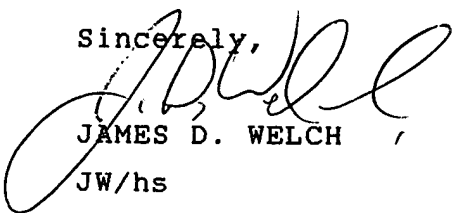
The Examiner should appreciate that in view of the exemplary and demonstrative nature of the Drawings it is impossible to identify a Drawing Figure and what Claim flows therefrom. The Methodology of the Claims can use Data acquired from any of the exemplary/demonstrative Systems. Hence, the approach in this Response.

Further, it is noted in passing that Applications which present Method Claims do not require Drawings.

It is hoped that with the insight herein, the Examiner will reconsider his position and Withdraw the Restriction.

Again, Claims 1, 39, 40 and 18 - 20 are Provisionally elected to provide a simplified approach to Examination. However, in view of the foregoing, the Examiner is respectfully requested to withdraw the Requirement. The Examiner is encouraged to phone Attorney Welch if he has questions. Attorney Welch is very receptive to close interaction with Examiners where that will avoid confusion and unnecessary effort and the like.

Sincerely,



JAMES D. WELCH

JW/hs

enc.